

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

KENNETH NOE,)	
)	
Plaintiff,)	
)	
v.)	No. 4:24-cv-00056-RLW
)	
HARRIS-STOWE STATE UNIVERSITY,)	Jury Trial Demanded
)	
Defendant.)	

**DEFENDANT HARRIS-STOWE STATE UNIVERSITY'S RESPONSE TO
PLAINTIFF'S NOTICE OF VOLUNTARY DISMISSAL OF COUNTS II AND IV**

COMES NOW Defendant Harris-Stowe State University ("Harris-Stowe") and, to the extent that Plaintiff's Notice of Voluntary Dismissal is deemed a Motion for Voluntary Dismissal rather than an opposition to Harris-Stowe's Motion to Dismiss, Dkt. 27-28, hereby states for its Response to Plaintiff's Notice of Voluntary Dismissal of Counts II and IV as follows:

1. On January 10, 2024, Harris-Stowe timely removed the case to this Court. Dkt. 1.
2. On January 17, 2024, Harris-Stowe filed an Answer to Plaintiff's Complaint and Motion to Dismiss Counts V, VII, and VIII. Dkt. 12-14.
3. On January 31, 2024, the deadline for Plaintiff's responses to the above, he sought a thirty-day extension of time. Dkt. 16. After Plaintiff's Motion for Extension of Time was fully-briefed, Dkt. 16-18, Plaintiff received the requested extension. Dkt. 19.
4. On February 29, 2024, Plaintiff opposed Harris-Stowe's Partial Motion to Dismiss, Dkt. 20. Plaintiff also sought leave to amend. Dkt. 22.

5. On March 11, 2024, Harris-Stowe filed a Reply in Support of its Partial Motion to Dismiss and opposed Plaintiff's Motion to Amend his Petition. Dkt. 23-24.

6. On March 20, 2024, Plaintiff's Motion to Amend was granted, and his First Amended Petition was filed. Dkt. 25-26.

7. On April 3, 2024, Defendant filed a Motion to Dismiss Plaintiff's First Amended Complaint. Dkts. 27-28.

8. Plaintiff received *two extensions of time* to respond to Harris-Stowe's Motion to Dismiss, Dkt. 29; Dkt. 31, ultimately receiving *approximately six weeks* to consider his approach and response.

9. On May 13, 2024, Plaintiff filed a notice of voluntary dismissal of Counts II and IV. Dkt. 33.

10. Also on May 13, 2024, Plaintiff filed a Motion to Remand. Dkt. 34-35.

11. Pursuant to Federal Rule of Civil Procedure 41(a)(1), a claim may be dismissed "by the plaintiff without order of the court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever occurs first, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action."

12. In this case, Harris-Stowe had already filed an Answer, thus requiring that all parties sign (and agree) to the stipulation of dismissal. Plaintiff did not obtain (or request) such consent to a dismissal without prejudice.

13. Accordingly, Harris-Stowe requests that Harris-Stowe's Motion to Dismiss Plaintiff's First Amended Complaint be granted and the First Amended Complaint, including Counts II and IV, be dismissed **with prejudice** by the Court for Plaintiff's failure to respond to any of the arguments presented therein, and/or on account of the arguments presented therein.

14. For an avoidance of doubt, Harris-Stowe does not oppose the dismissal of Counts II and IV, but, it does oppose the prejudice caused by the timing of Plaintiff's Notice of Voluntary Dismissal of Counts II and IV, and the implications thereof as described more fully in Defendant Harris-Stowe's Opposition to Plaintiff's Motion to Remand, filed contemporaneously. Consequently, **Counts II and IV should be dismissed with prejudice** for the reasons set forth in Harris-Stowe's Motion to Dismiss. To the extent the Court is inclined to dismiss with prejudice for the reasons set forth in Plaintiff's Notice of Voluntary Dismissal of Counts II and IV, the Court should do so but only **after** all other Counts are also dismissed consistent with the reasoning set forth in Harris-Stowe's Motion to Dismiss.

Wherefore, Defendant Harris-Stowe State University requests that the Court dismiss Plaintiff's First Amended Complaint, including Counts II and IV, with prejudice and such other relief as this Court deems proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on this 28th day of May, 2024, the foregoing was filed using the Court's CM/ECF system and will be served via the Court's CM/ECF filing system, on the following:

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